

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

Delvin Lloyd Drinkall, Debtor.

Adv. 19-03072

Bky. 19-31858

Chapter 11 Case

Delvin Lloyd Drinkall,
Plaintiff,

v.

Corry & Associates; Robert J. Corry, Jr.,
Defendants.

NOTICE OF HEARING AND MOTION FOR ENTRY OF DEFAULT JUDGMENT

TO: Defendants above-named: Corry & Associates, Attn.: Robert J. Corry, Jr. 437 West Colfax, Suite 300 Denver, CO 80204; Robert J. Corry, Jr., 9150 E. Jefferson Pl. Denver, CO 80237.

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff Delvin Lloyd Drinkall's Motion for Entry of Default Judgment on its claims in the above-referenced adversary proceeding will be heard by the court on Tuesday, October 15, 2019 at 10:00 a.m. in Courtroom 2B, Second Floor, at the United States Courthouse, 316 North Robert Street, Saint Paul, MN 55101.

Any response to this motion must be filed and served by delivery or by mail not later than October 10, 2019, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

This court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157, 1334, and 2201(a); Fed. R. Bankr. P. 5005, 7001(2) and (9), and 7013; and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing the above cases under chapter 11 was

This motion arises under 11 U.S.C. §§ 547, 548, and 550 and Fed. R. Bankr. P. 9013. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-2.

MOTION FOR ENTRY OF DEFAULT JUDGMENT

PLEASE TAKE NOTICE that, pursuant to Local Bankruptcy Rule 7055-1, the plaintiff hereby moves for entry of default judgment in the above-referenced adversary proceeding. This motion is based upon all of the pleadings, file and record herein, the accompanying Affidavit of Default, Identification of Defaulting Party, and Affidavit on the Merits. Pursuant to local Bankruptcy Rule 7055-1, the court in its discretion may order a hearing before entry of default judgment.

Dated: September 20, 2019

By: /e/ Paul V. Sween
Paul V. Sween (#107761)
ADAMS RIZZI & SWEEN, P.A.
300 First St. NW
Austin, MN 55912
Phone: (507) 433-7394
Fax: (507) 433-8890
psween@adamsrizzisween.com
ATTORNEYS FOR PLAINTIFF

VERIFICATION

I, Paul V. Sween, the applicant in the foregoing application for default judgment, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: September 20, 2019

/e/ Paul V. Sween

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re: Delvin Lloyd Drinkall,
Debtor.

Adv. 19-03072
Bky. 19-31858

Delvin Lloyd Drinkall,

Plaintiff,

Chapter 11 Case

v.

Corry & Associates; Robert J. Corry, Jr.,

Defendants.

AFFIDAVIT OF DEFAULT, IDENTIFICATION, MERITS AND AMOUNT DUE

Paul V. Sween, as attorney for Plaintiff states under penalty of perjury that:

1. I am the attorney for Plaintiff in this action.

AFFIDAVIT OF DEFAULT

2. The complaint was filed on August 9, 2019 [Doc. No. 1]. A copy of the Summons and Complaint was served upon both Defendants by U.S. Mail on August 15, 2019 as shown by the Certificate of Service on file [Doc. No. 6]. Defendants' answers were due on September 12, 2019. More than 30 days have elapsed from the date of the summons was issued.
3. Fed. R. Bankr. P. 7004(b)(3) provides that service upon a domestic or foreign corporation made be made within the U.S. by "[m]ailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process..." Fed. R. Bankr. P. 7004(d) provides for nationwide service.
4. Plaintiff served the complaint by mailing a copy by first class mail, postage prepaid to:

Corry & Associates
Attn.: Robert J. Corry, Jr.

437 West Colfax, Suite 300
Denver, CO 80204

[Doc. No. 6]. The defendant is a Colorado Limited Liability Company. According to information obtained from the Colorado Secretary of State website, the agent for service of process is Robert J. Corry, Jr. The entity address for Mr. Corry (as agent for service of process), the entity address and the entity mailing address is 437 West Colfax, Suite 300, Denver CO 80204.

5. Fed. R. Bankr. P. 7004(b)(1) provides that service upon an individual may made be made within the U.S. by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(d) provides for nationwide service.

6. Plaintiff served the complaint by mailing a copy by first class mail, postage prepaid to:

Robert J. Corry, Jr.
9150 E. Jefferson Pl.
Denver, CO 80237

[Doc. No. 6]. The defendant is an individual with his usual place of abode as 9150 E. Jefferson Pl., Denver CO 80237.

7. Fed. R. Bankr. P. 7012(a) provides in part: "[i]f a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court." Here, the time to answer the complaint has passed and no defense or other response of any kind has been received and each defendant has failed to answer, plead, or otherwise defend in this adversary proceeding. The Summons and Complaint have not been returned to Plaintiff by the postal service.
8. Accordingly, both defendants are in default.

AFFIDAVIT OF IDENTIFICATION

9. To the best of my knowledge, information, and belief, the full name and address of defendant Corry & Associates, 437 West Colfax, Suite 300, Denver, CO 80204
10. To the best of my knowledge, information, and belief, the full name and address of defendant Robert J. Corry, Jr., 9150 E. Jefferson Pl., Denver CO 80237
11. Defendant Corry & Associates is a limited liability company. Accordingly, defendant Corry & Associates is not now in the military service of the United States nor is defendant incompetent, an infant, or a minor.
12. Defendant Robert J. Corry, Jr. is a natural person. To the best of my knowledge, information, and belief, defendant is not now in the military service of the United States, nor is he incompetent, an infant, or a minor.

AFFIDAVIT ON THE MERITS

13. In February, 2019, Plaintiff Delvin Lloyd Drinkall transferred \$475,000.00 (the “funds”) over two wires from Plaintiff’s account to Defendant Corry & Associates (“law firm”). A true and correct copy of the bank statement showing the wire transfers to Defendants is attached as Exhibit A.1
14. The agreement between Plaintiff and Defendants was that the monies were to remain in defendant law firm’s Trust Account to be used at the direction of Plaintiff.
15. Upon demand for release of the funds back to Plaintiff, Defendant Robert Corry informed Plaintiff that Robert Corry had invested Plaintiff’s funds and could not immediately return the monies to Plaintiff.
16. Defendants have failed to respond to any additional requests from Plaintiff to return the funds or provide the location of where the monies are being held.
17. Defendants have breached their agreement with Plaintiff by failing to return or account

¹ A copy of the statements is also attached to the complaint as Exhibit A.

for the funds at the request of Plaintiff while having no right or claim to the funds.

AFFIDAVIT OF AMOUNT DUE

18. As detailed above and in Exhibit A, the amount due to Plaintiff by Defendants is \$475,000.00.

19. Plaintiff has incurred \$350.00 in costs and disbursement for the filing fee.

Dated: September 18, 2019

/s/ Paul V. Sween
Paul V. Sween (#107761)
ADAMS RIZZI & SWEEN, P.A.
300 First St. NW
Austin, MN 55912
Phone: (507) 433-7394
Fax: (507) 433-8890
psween@adamsrizzisween.com

COUNSEL FOR PLAINTIFF

TELEPHONE 507-754-5123

EXHIBIT A

3D CUSTOM PUMPING LLC
18355 790TH AVE
OSTRANDER MN 55961

We believe in you.
Member FDIC. And the community.
www.ffmbank.com

BUSINESS INTEREST CHECKING ACCOUNT [REDACTED]

DESCRIPTION	DEBITS	CREDITS	DATE	B
BALANCE LAST STATEMENT			01/31/19	128,
Telephone Transfer from Checking XX3371 per Delvin		350,000.00	02/07/19	478,
Outgoing Wire Transfer-ROBERT J CORRY JR ATTORNEY TRUST	125,000.00		02/07/19	353,
Outgoing Wire Transfer-ROBERT J CORRY JR ATTORNEY TRUST	350,000.00		02/07/19	3,
Outgoing Wire Transfer Fee	25.00		02/07/19	3,
Outgoing Wire Transfer Fee	25.00		02/07/19	3,
INTEREST AT .234000 %		5.36	02/28/19	3,
PAPER STATEMENT FEE	5.00		02/28/19	3,
SERVICE CHARGE	.20		02/28/19	3,
BALANCE THIS STATEMENT			02/28/19	3,
TOTAL CREDITS (2)		350,005.36	MINIMUM BALANCE	3
TOTAL DEBITS (6)		475,055.20	AVERAGE BALANCE	29
INTEREST THIS STATEMENT		5.36		

- END OF STATEMENT -

**United States Bankruptcy Court
District of Minnesota**

In re:		Adv. Case No.: 19-03072
Delvin Lloyd Drinkall		Bky. Case No.: 19-31858
Delvin Lloyd Drinkall	v.	Debtor(s)
Corry & Associates		Plaintiff(s)
Robert J. Corry, Jr.		Defendant(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019 copies of the **Notice of Hearing and Motion for Entry of Default Judgment; Affidavit of Default, Identification, Merits and Amount Due; and proposed Findings of Fact, Conclusions of Law, and Order for Judgment** were served by U.S. Mail on all interested parties listed below.

Corry & Associates
Attn.: Robert J. Corry, Jr.
437 West Colfax, Suite 300
Denver, CO 80204

Robert J. Corry, Jr.
9150 E. Jefferson Pl.
Denver, CO 80237-1953

Date: September 20, 2019

By: /s/ Paul V. Sween
Paul V. Sween (#107761)
Adams, Rizzi & Sween, P.A.
300 First Street NW
Austin, MN 55912
Telephone: (507) 433-7394
psween@adamsrizzisween.com

Attorneys for Debtor in Possession

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Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

THIS PROCEEDING is before the court on the Plaintiff's application for default judgment. Upon the application, records and proceeding herein, the court makes the following:

FINDINGS OF FACT

1. The petitions commencing the debtor's chapter 11 case was filed on June 6, 2019.
2. Service was made by summons in accordance with Federal Rule of Bankruptcy Procedure 7004 on the Defendants by serving Corry & Associates, 437 West Colfax, Suite 300, Denver, CO 80204 at the usual place of business and Robert J. Corry, Jr., 9150 E. Jefferson Pl., Denver, CO, 80237-1953 at his usual place of abode on or about August 15, 2019.
3. No extension of time was sought by the Defendants.
4. Defendants have failed to file a responsive pleading or motion to the Complaint or otherwise defend in this adversary proceeding.
5. Defendants owe Delvin Lloyd Drinkall the sum of \$475,000.00.
6. Plaintiff has incurred costs and disbursements of \$350.00.

CONCLUSIONS OF LAW

1. Defendants are in default for failure to answer the complaint, plead or otherwise defend in this adversary proceeding.
2. Plaintiff is entitled to judgment against the defendants in the amount of \$475,000.00 plus costs and disbursements of \$350.00.

ORDER FOR JUDGMENT

IT IS ORDERED: The plaintiff shall recover from defendants \$475,000.00, plus costs and disbursements of \$350.00.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated:

William J. Fisher
United States Bankruptcy Judge